

1 **UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4

5 **LONG TITLE**

6 **General Description:**

7 This bill enacts the Uniform Real Property Transfer on Death Act.

8 **Highlighted Provisions:**

9 This bill:

- 10 ▶ creates a new part in the Utah Uniform Probate Code entitled the Uniform Real
- 11 Property Transfer on Death Act;
- 12 ▶ defines terms;
- 13 ▶ specifically applies only to deeds created by a person who dies on or after May 9,
- 14 2017;
- 15 ▶ provides that the act is nonexclusive and does not affect any other method of
- 16 transferring real property allowed under Utah law;
- 17 ▶ makes clear that the transfer of property only occurs upon the transferor's death;
- 18 ▶ provides that a transfer on death deed is revocable and nontestamentary; and
- 19 ▶ requires that the transferor have the same capacity as that required to make a will at
- 20 the time the deed is made.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 ENACTS:

27 **75-6-401**, Utah Code Annotated 1953

28 **75-6-402**, Utah Code Annotated 1953

29 **75-6-403**, Utah Code Annotated 1953

30 **75-6-404**, Utah Code Annotated 1953

31 **75-6-405**, Utah Code Annotated 1953

32 **75-6-406**, Utah Code Annotated 1953

33 **75-6-407**, Utah Code Annotated 1953
34 **75-6-408**, Utah Code Annotated 1953
35 **75-6-409**, Utah Code Annotated 1953
36 **75-6-410**, Utah Code Annotated 1953
37 **75-6-411**, Utah Code Annotated 1953
38 **75-6-412**, Utah Code Annotated 1953
39 **75-6-413**, Utah Code Annotated 1953
40 **75-6-414**, Utah Code Annotated 1953
41 **75-6-415**, Utah Code Annotated 1953
42 **75-6-416**, Utah Code Annotated 1953
43 **75-6-417**, Utah Code Annotated 1953
44 **75-6-418**, Utah Code Annotated 1953
45 **75-6-419**, Utah Code Annotated 1953

46

47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **75-6-401** is enacted to read:

49 **CHAPTER 6. UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT**

50 **75-6-401. Title.**

51 This chapter is known as the "Uniform Real Property Transfer on Death Act."

52 Section 2. Section **75-6-402** is enacted to read:

53 **75-6-402. Definitions.**

54 As used in this chapter:

55 (1) "Beneficiary" means a person who receives property under a transfer on death deed.

56 (2) "Class gift" means a transfer to a group of persons who are classified by their
57 relationship to one another or the transferor, and who are not individually named in the
58 transferring document.

59 (3) "Designated beneficiary" means a person designated to receive property in a
60 transfer on death deed.

61 (4) " Individual" means a natural person.

62 (5) "Joint owner" means an individual who owns property concurrently with one or
63 more other individuals with a right of survivorship. The term includes a joint tenant, owner of

64 community property with a right of survivorship, and tenant by the entirety. The term does not
65 include a tenant in common or owner of community property without a right of survivorship.

66 (6) "Natural person" means a human being.

67 (7) "Person" means an individual, corporation, business trust, estate, trust, partnership,
68 limited liability company, association, joint venture, public corporation, government or
69 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

70 (8) "Property" means an interest in real property located in this state that is transferable
71 on the death of the owner.

72 (9) "Transfer on death deed" means a deed authorized under this chapter.

73 (10) "Transferor" means an individual, in their individual capacity, who makes a
74 transfer on death deed.

75 Section 3. Section **75-6-403** is enacted to read:

76 **75-6-403. Applicability.**

77 This chapter applies to a transfer on death deed made before, on, or after May 9, 2017,
78 by a transferor dying on or after May 9, 2017.

79 Section 4. Section **75-6-404** is enacted to read:

80 **75-6-404. Nonexclusivity.**

81 This chapter does not affect any method of transferring property otherwise permitted
82 under the law of this state.

83 Section 5. Section **75-6-405** is enacted to read:

84 **75-6-405. Transfer on death deed authorized.**

85 (1) An individual may transfer property to one or more named beneficiaries effective at
86 the transferor's death by a transfer on death deed.

87 (2) A class gift may not be made by a transfer on death deed.

88 Section 6. Section **75-6-406** is enacted to read:

89 **75-6-406. Transfer on death deed revocable.**

90 A transfer on death deed is revocable even if the deed or another instrument contains a
91 contrary provision.

92 Section 7. Section **75-6-407** is enacted to read:

93 **75-6-407. Transfer on death deed nontestamentary.**

94 A transfer on death deed is nontestamentary.

95 Section 8. Section **75-6-408** is enacted to read:

96 **75-6-408. Capacity of transferor.**

97 The capacity required to make or revoke a transfer on death deed is the same as that
98 required to make a will.

99 Section 9. Section **75-6-409** is enacted to read:

100 **75-6-409. Requirements.**

101 A transfer on death deed shall:

102 (1) contain the essential elements and formalities of a properly recordable inter vivos
103 deed;

104 (2) state that the transfer to the designated beneficiary is to occur at the transferor's
105 death; and

106 (3) be recorded before the transferor's death in the public records in the county
107 recorder's office of the county where the property is located.

108 Section 10. Section **75-6-410** is enacted to read:

109 **75-6-410. Notice, delivery, acceptance, consideration not required.**

110 A transfer on death deed is effective without:

111 (1) notice or delivery to or acceptance by the designated beneficiary during the
112 transferor's life; or

113 (2) consideration.

114 Section 11. Section **75-6-411** is enacted to read:

115 **75-6-411. Revocation by instrument authorized -- Revocation by act not**
116 **permitted.**

117 (1) Subject to Subsection (2), an instrument is effective to revoke a recorded transfer
118 on death deed, or any part of it, only if the instrument:

119 (a) is one of the following:

120 (i) a transfer on death deed that revokes the deed or part of the deed expressly or by
121 inconsistency;

122 (ii) an instrument of revocation that expressly revokes the deed or part of the deed; or

123 (iii) an inter vivos deed that revokes the transfer on death deed or part of the deed
124 expressly or by inconsistency; and

125 (b) is acknowledged by the transferor after the acknowledgment of the deed being
126 revoked and recorded in the public records in the office of the county recorder where the deed
127 is recorded before the transferor's death.

128 (2) If a transfer on death deed is made by more than one transferor:

129 (a) revocation by a transferor does not affect the deed as to the interest of another
130 transferor; and

131 (b) a deed of joint owners is revoked only if it is revoked by all of the living joint
132 owners.

133 (3) After a transfer on death deed is recorded, it may not be revoked by a revocatory act
134 on the deed.

135 (4) This section does not limit the effect of an inter vivos transfer of the property.

136 (5) Property subject to a revocation of a transfer on death deed shall adeem and
137 nonademption statutes shall be inapplicable to the deed.

138 Section 12. Section **75-6-412** is enacted to read:

139 **75-6-412. Effect of transfer on death deed during transferor's life.**

140 During a transferor's life, a transfer on death deed does not:

141 (1) affect an interest or right of the transferor or any other owner, including the right to
142 transfer or encumber the property;

143 (2) affect an interest or right of a transferee, even if the transferee has actual or
144 constructive notice of the deed;

145 (3) affect an interest or right of the transferor's secured or unsecured creditors or future
146 creditors, even if they have actual or constructive notice of the deed;

147 (4) affect the transferor's or designated beneficiary's eligibility for any form of public
148 assistance;

149 (5) create a legal or equitable interest in favor of the designated beneficiary; or

150 (6) subject the property to claims or process of the designated beneficiary's creditors.

151 Section 13. Section **75-6-413** is enacted to read:

152 **75-6-413. Effect of transfer on death deed at transferor's death.**

153 (1) Except as otherwise provided in the transfer on death deed, Sections 75-2-205,
154 75-2-702, 75-2-803, and 75-2-804 on the death of the transferor, the following rules apply to
155 property that is the subject of a transfer on death deed and owned by the transferor at death.

156 (a) Subject to Subsection (1)(b), the interests in the property are transferred to the
157 designated beneficiaries in accordance with the deed.

158 (b) The interest of a designated beneficiary is contingent on the designated beneficiary
159 surviving the transferor. Notwithstanding Section 75-2-706, the interest of a designated
160 beneficiary that fails to survive the transferor lapses.

161 (c) Subject to Subsection (1)(d), concurrent interests are transferred to the beneficiaries
162 in equal and undivided shares with no right of survivorship, unless otherwise specified in the
163 transfer on death deed.

164 (d) If the transferor has identified two or more designated beneficiaries to receive
165 concurrent interests in the property, the share of one that lapses or fails for any reason is
166 transferred to the other, or to the others in proportion to the interest of each in the remaining
167 part of the property held concurrently.

168 (2) Subject to Title 57, Chapter 3, Recording of Documents, a beneficiary takes the
169 property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens,
170 and other interests to which the property is subject at the transferor's death. For purposes of
171 this Subsection (2) and Title 57, Chapter 3, Recording of Documents, the recording of the
172 transfer on death deed is considered to have occurred at the transferor's death.

173 (3) If a transferor is a joint owner and is:

174 (a) survived by one or more other joint owners, the property that is the subject of a
175 transfer on death deed belongs to the surviving joint owner or owners with right of
176 survivorship; or

177 (b) the last surviving joint owner, the transfer on death deed is effective.

178 (4) A transfer on death deed transfers property without covenant or warranty of title
179 even if the deed contains a contrary provision.

180 (5) Following the death of the transferor, an affidavit in substantially the form found in
181 Section 57-1-5.1 shall be recorded in the office of the recorder of the county in which the
182 affected property is located. Each affidavit shall:

183 (a) contain a legal description of the real property that is affected;

184 (b) reference the entry number and the book and page of the previously recorded
185 transfer on death deed; and

186 (c) have attached as an exhibit, a copy of the death certificate or other document issued

187 by a governmental agency as described in Section 75-1-107 certifying the transferor's death.

188 Section 14. Section **75-6-414** is enacted to read:

189 **75-6-414. Disclaimer.**

190 A beneficiary may disclaim all or part of the beneficiary's interest.

191 Section 15. Section **75-6-415** is enacted to read:

192 **75-6-415. Liability for creditor claims and statutory allowances.**

193 (1) To the extent the transferor's probate estate is insufficient to satisfy an allowed
194 claim against the estate or a statutory allowance to a surviving spouse or child, the estate may
195 enforce the liability against property transferred at the transferor's death by a transfer on death
196 deed.

197 (2) If more than one property is transferred by one or more transfer on death deeds, the
198 liability under Subsection (1) is apportioned among the properties in proportion to their net
199 values at the transferor's death.

200 (3) A proceeding to enforce the liability under this section shall be commenced not
201 later than 18 months after the transferor's death.

202 Section 16. Section **75-6-416** is enacted to read:

203 **75-6-416. Form of transfer on death deed.**

204 The following form may be used to create a transfer on death deed. The other sections
205 of this chapter govern the effect of this or any other instrument used to create a transfer on
206 death deed:

207 (front of form)

208 REVOCABLE TRANSFER ON DEATH DEED FORM

209 NOTICE TO OWNER

210 You should carefully read all information on the other side of this form. You May Want
211 to Consult a Lawyer Before Using This Form.

212 This form must be recorded before your death, or it will not be effective. The
213 beneficiary must be a named person.

214 IDENTIFYING INFORMATION

215 Owner or Owners Making This Deed:

216 _____

217 Printed name

Mailing address

218 _____
 219 Printed name Mailing address

220 Legal description of the property:
 221 _____

222 PRIMARY BENEFICIARY

223 I designate the following beneficiary if the beneficiary survives me.

224 _____
 225 Printed name Mailing address, if available

226 ALTERNATE BENEFICIARY – Optional

227 If my primary beneficiary does not survive me, I designate the following alternate
 228 beneficiary if that beneficiary survives me.

229 _____
 230 Printed name Mailing address, if available

231 TRANSFER ON DEATH

232 At my death, I transfer my interest in the described property to the beneficiaries as
 233 designated above.

234 Before my death, I have the right to revoke this deed.

235 SIGNATURE OF OWNER OR OWNERS MAKING THIS DEED

236 _____ [(SEAL)] _____
 237 Signature Date

238 _____ [(SEAL)] _____
 239 Signature Date

240 ACKNOWLEDGMENT

241 (insert acknowledgment for deed here)

242 (back of form)

243 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

244 Q. What does the Transfer on Death (TOD) deed do?

245 A. When you die, this deed transfers the described property, subject to any liens or
 246 mortgages (or other encumbrances) on the property at your death. Probate is not required. The
 247 TOD deed has no effect until you die. You can revoke it at any time. You are also free to
 248 transfer the property to someone else during your lifetime. If you do not own any interest in the

249 property when you die, this deed will have no effect.

250 Q. How do I make a TOD deed?

251 A. Complete this form. Have it acknowledged before a notary public or other individual
252 authorized by law to take acknowledgments. Record the form in each county where any part of
253 the property is located. The form has no effect unless it is acknowledged and recorded before
254 your death.

255 Q. Is the "legal description" of the property necessary?

256 A. Yes.

257 Q. How do I find the "legal description" of the property?

258 A. This information may be on the deed you received when you became an owner of the
259 property. This information may also be available in the office of the county recorder for the
260 county where the property is located. If you are not absolutely sure, consult a lawyer.

261 Q. Can I change my mind before I record the TOD deed?

262 A. Yes. If you have not yet recorded the deed and want to change your mind, simply
263 tear up or otherwise destroy the deed.

264 Q. How do I "record" the TOD deed?

265 A. Take the completed and acknowledged form to the office of the county recorder of
266 the county where the property is located. Follow the instructions given by the county recorder
267 to make the form part of the official property records. If the property is in more than one
268 county, you should record the deed in each county.

269 Q. Can I later revoke the TOD deed if I change my mind?

270 A. Yes. The TOD deed is revocable. No one, including the beneficiaries, can prevent
271 you from revoking the deed.

272 Q. How do I revoke the TOD deed after it is recorded?

273 A. There are three ways to revoke a recorded TOD deed: (1) Complete and
274 acknowledge a revocation form, and record it in each county where the property is located. (2)
275 Complete and acknowledge a new TOD deed that disposes of the same property, and record it
276 in each county where the property is located. (3) Transfer the property to someone else during
277 your lifetime by a recorded deed that expressly revokes the TOD deed. You may not revoke the
278 TOD deed by will.

279 Q. I am being pressured to complete this form. What should I do?

280 A. Do not complete this form under pressure. Seek help from a trusted family member,
281 a friend, or a lawyer.

282 Q. Do I need to tell the beneficiaries about the TOD deed?

283 A. No, but it is recommended. Secrecy can cause later complications and might make it
284 easier for others to commit fraud.

285 Q. If I sign a TOD deed and designate my two children as beneficiaries, and one of
286 them dies before me, does the interest of my child that dies before me pass to his or her
287 children?

288 A. No. Everything will go to your surviving child unless you record a new transfer on
289 death deed to state otherwise. If you have questions regarding how to word a new transfer on
290 death deed, you are encouraged to consult a lawyer.

291 Q. I have other questions about this form. What should I do?

292 A. This form is designed to fit some but not all situations. If you have other questions,
293 you are encouraged to consult a lawyer.

294 Section 17. Section **75-6-417** is enacted to read:

295 **75-6-417. Optional form of revocation.**

296 The following form may be used to create an instrument of revocation under this
297 chapter. The other sections of this chapter govern the effect of this or any other instrument used
298 to revoke a transfer on death deed.

299 (front of form)

300 **FULL REVOCATION OF TRANSFER ON DEATH DEED**

301 **NOTICE TO OWNER**

302 This revocation must be recorded before you die or it will not be effective. This
303 revocation is effective only as to the interests in the property of owners who sign this
304 revocation.

305 **IDENTIFYING INFORMATION**

306 Owner or Owners of Property Making This Revocation:

307 _____

308 Printed name Mailing address

309 _____

310 Printed name Mailing address

311 Legal description of the property:

312 _____

313 REVOCATION

314 I revoke all my previous transfers of this property by transfer on death deed.

315 SIGNATURE OF OWNER OR OWNERS MAKING THIS REVOCATION

316 _____ [(SEAL)]

317 Signature Date

318 _____ [(SEAL)]

319 Signature Date

320 ACKNOWLEDGMENT

321 (insert acknowledgment here)

322 (back of form)

323 COMMON QUESTIONS ABOUT THE USE OF THIS FORM

324 Q. How do I use this form to revoke a Transfer on Death (TOD) deed?

325 A. Complete this form. Have it acknowledged before a notary public or other
326 individual authorized to take acknowledgments. Record the form in the public records in the
327 office of the county recorder of each county where the property is located. The form must be
328 acknowledged and recorded before your death or it has no effect.

329 Q. How do I find the "legal description" of the property?

330 A. This information may be on the TOD deed. It may also be available in the office of
331 the county recorder for the county where the property is located. If you are not absolutely sure,
332 consult a lawyer.

333 Q. How do I "record" the form?

334 A. Take the completed and acknowledged form to the office of the county recorder of
335 the county where the property is located. Follow the instructions given by the county recorder
336 to make the form part of the official property records. If the property is located in more than
337 one county, you should record the form in each of those counties.

338 Q. I am being pressured to complete this form. What should I do?

339 A. Do not complete this form under pressure. Seek help from a trusted family member,
340 a friend, or a lawyer.

341 Q. Can this form be used for a partial revocation of a previously filed Transfer on Death

342 Deed?

343 A. No. This form is to be used for full revocation of a deed. In the case of a partial
344 revocation, a new Transfer on Death Deed must be filed.

345 Q. I have other questions about this form. What should I do?

346 A. This form is designed to fit some but not all situations. If you have other questions,
347 consult a lawyer.

348 Section 18. Section **75-6-418** is enacted to read:

349 **75-6-418. Uniformity of application and construction.**

350 In applying and construing this uniform act, consideration must be given to the need to
351 promote uniformity of the law with respect to its subject matter among the states that enact it.

352 Section 19. Section **75-6-419** is enacted to read:

353 **75-6-419. Relation to Electronic Signatures in Global and National Commerce**

354 **Act.**

355 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
356 Global and National Commerce Act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit,
357 or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery
358 of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).